

# **EXHIBIT A**

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1. *People v. Roopchand*, 107 A.D.2d 35 (2d Dep’t 1985): Affirming conviction but unequivocally condemning trial prosecutor for making inflammatory summation argument intended to elicit sympathy for the complainant and arouse animosity against the defendant, and warning the prosecutor that future infractions may lead to disciplinary action, and that the court expected the Queens County D.A. to issue an appropriate internal admonition.
2. *People v. Jones*, 108 A.D.2d 824 (2d Dep’t 1985): Reversing robbery conviction where, among other things, the prosecutor improperly elicited that the defendant had previously hit a woman with a bat, and then suggested on summation that the jury could never believe a man who had done this.
3. *People v. Valdivia*, 108 A.D.2d 885 (2d Dep’t 1985): Affirming conviction but “strongly condemn[ing]” prosecutor for improperly cross-examining alibi witness regarding his taking an affirmation instead of an oath and revisiting the matter in summation, and for characterizing defendant’s testimony as “an out and out series of lies.”
4. *People v. Hooks*, 110 A.D.2d 909 (2d Dep’t 1985): Reversing conviction for rape, robbery, and burglary where prosecutor cross-examined defendant on his prior conviction in such a way as to improperly create the inference that because defendant had previously committed a burglary, he had also committed the instant offenses.
5. *People v. Brown*, 111 A.D.2d 248 (2d Dep’t 1985): In reversing conviction on other grounds, reprimanding prosecutor for making comments during summation that characterized defendant as lying while characterizing the prosecution as “on the side of truth,” and implying that the jury should convict even if not convinced beyond a reasonable doubt, so long as it believed its verdict represented the “truth.”
6. *People v. Torres*, 111 A.D.2d 885 (2d Dep’t 1985): Reversing, in part, because prosecutor repeatedly cross-examined alibi witness on why the witness did not contact the police, improperly implying witness was obligated to come forward, and because prosecutor consistently implied during summation that defense had concocted alibi, and improperly suggested that the jury would be subject to derision if they acquitted defendant.
7. *People v. Williams*, 112 A.D.2d 177 (2d Dep’t 1985): In reversing, reprimanding trial prosecutor for intimating to jury during summation that they were required to find that the complainant had lied in order to acquit defendant, and improperly bolstering by injecting his integrity and the integrity of his office into the case.

8. *People v. Hines*, 112 A.D.2d 316 (2d Dep't 1985): Reversing in part because the prosecutor, during his summation, made inappropriate comments about the defendant, and emphasized the other "police procedures" which led to the selection of defendant as a suspect, clearly inviting the jury to infer that there was other evidence against defendant, of which they had not been told.
9. *People v. La Rosa*, 112 A.D.2d 954 (2d Dep't 1985): Reversing conviction where the prosecutor, in summation, improperly vouched for his own case, denigrated the defense, misrepresented material facts, and misquoted testimony.
10. *People v. Reyes*, 119 A.D.2d 596 (2d Dep't 1986): Affirming conviction but noting that prosecutor improperly told jury that "contrary to what the Defense Counsel would have you believe, a trial is not a search for reasonable doubt. Plainly simply a trial is a search for truth. Not supposed to be sitting here trying to pick reasonable doubt out from everything that goes on [sic]."
11. *People v. Mercado*, 120 A.D.2d 619 (2d Dep't 1986): Ordering new trial where, among other errors, court allowed prosecutor to admit photograph of defendant posing with handguns for no other purpose than to arouse jurors' emotions, and inflammatory nature of photographs was made worse when prosecutor, in summation, commented on jury having seen defendant in his "Al Capone get-up."
12. *People v. Pascullo*, 120 A.D.2d 687 (2d Dep't 1986): Reversing conviction in part because prosecutor suggested improper inferences of racial motivation and informed the jury that an acquittal would be a condonation of racism.
13. *People v. Beaman*, 122 A.D.2d 848 (2d Dep't 1986): Reversing conviction because prosecutor called witness to stand knowing he would refuse to testify, and improperly commenting on this refusal during summation, thereby inviting jury to speculate that witness had been threatened and refused to testify out of fear.
14. *People v. Ciervo*, 123 A.D.2d 393 (2d Dep't 1986): Reversing conviction in part because of prosecutor's improper summation comments implying that a conviction was warranted based solely upon the defendant's character, and repeated characterizations of the defense case as a "con."
15. *People v. Roudabush*, 123 A.D.2d 649 (2d Dep't 1986): Affirming conviction but "condemn[ing]" prosecutor's misconduct during summation, and noting that court made its position on this misconduct "quite clear" during oral argument.
16. *People v. Anderson*, 123 A.D.2d 770 (2d Dep't 1986): Reversing conviction because prosecutor re-called witness (who had originally been a codefendant in the case) to the stand, even though prosecutor knew the witness was going to invoke his privilege against self-incrimination, and improperly commented several

times on this invocation of privilege during summation, thus inviting jury to draw an unwarranted inference against the defendant.

17. *People v. Brown*, 125 A.D.2d 321 (2d Dep't 1986): Reversing conviction because prosecutor improperly bolstered victim's testimony by implying that the defendant's stipulation that the victim had been raped and sodomized was a stipulation that the victim had told the truth, and by telling the jury something was "terribly wrong" with them if they did not believe the victim.
18. *People v. Montalvo*, 125 A.D.2d 338 (2d Dep't 1986): Reversing conviction where prosecutor, in his summation, improperly commented upon the defendant's failure to testify and to call witnesses on his own behalf.
19. *People v. Napoli*, 126 A.D.2d 674 (2d Dep't 1987): Affirming conviction but noting that prosecutor "went beyond the four corners of the evidence" in summation.
20. *People v. Faison*, 126 A.D.2d 739 (2d Dep't 1987): Ordering new trial where prosecutor improperly cross-examined accused (1) on his failure to disclose alibi to police after being given *Miranda* warnings, and (2) on his failure to produce records indicating that he was at work at time of robbery, which suggested that defendant bore burden of proving alibi defense.
21. *People v. Memminger*, 126 A.D.2d 752 (2d Dep't 1987): Ordering new trial on various grounds and "adomish[ing]" prosecutor "to remain within the bounds of fair comment during summation and to refrain from inappropriate and inflammatory remarks."
22. *People v. Perez*, 127 A.D.2d 707 (2d Dep't 1987): Ordering new trial where, among other things, prosecutor improperly implied on cross-examination of accused that he was involved in previous criminal activity.
23. *People v. Simms*, 130 A.D.2d 525 (2d Dep't 1987): Ordering new trial because of "numerous instances of prosecutorial misconduct which occurred throughout the course of the trial," including prosecutor's (1) eliciting of testimony that had been suppressed, (2) referring to that same evidence during summation, (3) repeatedly referring to facts not in evidence, (4) calling defendant's summation a "fairy tale," and (5) vouching for witnesses' credibility.
24. *People v. Scoon*, 130 A.D.2d 597 (2d Dep't 1987): Ordering new trial where prosecutor improperly (1) argued in summation that witness was not involved in crimes of dishonesty when he knew that the witness had a youthful-offender adjudication for grand larceny, and (2) repeatedly commented on matters not in evidence during summation.

25. *People v. Torriente*, 131 A.D.2d 793 (2d Dep't 1987): Ordering new trial where prosecutor improperly (1) cross-examined shooting victim about drug use, (2) cross-examined defendant on whether he had entered country illegally, (3) called police officer to introduce irrelevant testimony about defendant's place of residence, and (4) made prejudicial statements in summation about defense counsel's summation and witnesses' testimony.
26. *People v. Romain*, 137 A.D.2d 848 (2d Dep't 1988): Ordering new trial in part based on prosecutor's "gross distortion" in summation of defendant's testimony, implying that he had admitted guilt when in fact he had not.
27. *People v. Chin*, 138 A.D.2d 389 (2d Dep't 1988): Ordering new trial where prosecutor improperly made unwarranted inferences in summation that defendant accused of rape against young girl planned to commit similar offenses with one of his character witnesses.
28. *People v. Dunlap*, 138 A.D.2d 393 (2d Dep't 1988): Reversing conviction based on prosecutorial misconduct even though proof of defendants' guilt was overwhelming, where prosecutor in summation diverted jury's attention from witnesses' inconsistencies with elaborate depiction of defendants as sharks hunting prey. *See also People v. Williams*, 162 A.D.2d 488 (2d Dep't 1990) (reversing codefendant's conviction on same ground).
29. *People v. Stewart*, 153 A.D.2d 706 (2d Dep't 1989): Vacating conviction where the "trial was marked by the prosecutor's efforts, even over sustained objections, to characterize the defendant as an individual predisposed to commit the crime charged."
30. *People v. Langford*, 153 A.D.2d 908 (2d Dep't 1989): Ordering new trial where prosecutor suggested, with no evidence, that defendant's alibi witness used drugs and was involved in charged robbery, and made several improper remarks in summation, including denigrating defense counsel and defense witnesses, and suggesting to the jury that, in order to acquit, they would have to find that a witness had lied.
31. *People v. Durham*, 154 A.D.2d 615 (2d Dep't 1989): Ordering new trial in part based on prosecutor's misconduct in summation, which included vouching for prosecution witnesses and referring pejoratively to defendant.
32. *People v. Gomez*, 156 A.D.2d 462 (2d Dep't 1989): New trial ordered where prosecutor (1) defied court's order limiting cross-examination of witness on pending criminal case, prompting court to accuse prosecutor of bad faith, (2) cross-examined witness on his supposed communications with defendant, even though he knew the two were incarcerated and not free to converse, prompting

court again to accuse prosecutor of bad faith, and (3) in summation, attempted to inflame the jury, vouched for witnesses' credibility, denigrated the defense, and shifted the burden of proof.

33. *People v. Pinkas*, 156 A.D.2d 485 (2d Dep't 1989): Ordering new trial where court ordered counsel not to commingle discrete allegations, but prosecutor "repeatedly sought to join the two incidents during her summation in spite of the direction by the Trial Judge to desist."
34. *People v. Rivera*, 170 A.D.2d 544 (2d Dep't 1991): Reversing rape conviction because the prosecutor failed to disclose police reports that were "in direct conflict" with the complainant's rape allegation.
35. *People v. Gaskins*, 171 A.D.2d 272 (2d Dep't 1991): Reversing conviction where the prosecutor failed to disclose the videotape of an interview of the alleged child victim.
36. *People v. Stevens*, 174 A.D.2d 640 (2d Dep't 1991): Reversing conviction in part based on prosecutor's statement in summation that "if this defendant wasn't charged with sodomy . . . he should have been."
37. *People v. Delace*, 174 A.D.2d 688 (2d Dep't 1991): Reversing robbery conviction where the prosecutor failed to disclose witness statements.
38. *People v. Gunther*, 175 A.D.2d 262 (2d Dep't 1991): Reversing conviction where prosecutor improperly attempted to show defendant's propensity to commit the charged crime of dealing cocaine by extensively cross-examining him on past convictions for dealing marijuana.
39. *People v. Wilkens*, 177 A.D.2d 678 (2d Dep't 1991): Reversing convictions where, despite court order that defendant's use of aliases could be used only for identification purposes, prosecutor cross-examined defendant on the same topic for impeachment purposes and then argued on summation that defendant was not to be believed because he "hides behind three names."
40. *People v. Parker*, 178 A.D.2d 665 (2d Dep't 1991): Ordering new trial in part based on prosecutor's misconduct in summation, including improperly suggesting that defendant's daughter's unfazed demeanor on witness stand indicated that defendant had exposed her to drug dealing; trying to mislead the jury into finding defendant guilty by association; and announcing in open court that defendant's daughter was wearing T-shirt that court had refused to admit in evidence.
41. *People v. Baba-Ali*, 179 A.D.2d 725 (2d Dep't 1992): Reversing a rape conviction involving a four-year-old child where, despite a court order, the prosecutor failed until the eve of trial to disclose medical records finding no signs of sexual abuse.

42. *People v. Mack*, 180 A.D.2d 824 (2d Dep't 1992): Reversing conviction where prosecutor failed to turn over notes that could have been used to impeach witness.
43. *People v. Figueroa*, 181 A.D.2d 690 (2d Dep't 1992): Ordering new trial where prosecutor's summation "went well beyond the bounds of fair advocacy" by calling defendant's alibi witness untruthful, by suggesting that defendant was selling drugs on the night of his arrest for a crime he was alleged to have committed on another day, and by suggesting that defendant's alibi was concocted after the witness met with defense counsel.
44. *People v. Clausell*, 182 A.D.2d 132 (2d Dep't 1992): Reversing a narcotics conviction where the prosecutor repeatedly denied the existence of a "buy report," which turned out to include a description of the buyer wholly at odds with the description the arresting officer had said he received and matched to the defendant.
45. *People v. James*, 184 A.D.2d 582 (2d Dep't 1992): Reversing conviction where prosecutor represented that People would not introduce unfairly prejudicial evidence of defendant's prior possession of drugs but then cross-examined police officer extensively on that very evidence and emphasized it in summation.
46. *People v. Andre*, 185 A.D.2d 276 (2d Dep't 1992): Reversing conviction where, among other things, prosecutor in summation improperly called People's key witness a "brave young girl" and asked jury not "to let her down."
47. *People v. Campbell*, 186 A.D.2d 212 (2d Dep't 1992): Reversing a robbery conviction because the prosecutor withheld hospital records which contained statements of the complainant contradicting her trial testimony.
48. *People v. Nieves*, 186 A.D.2d 276 (2d Dep't 1992): Reversing conviction where prosecutor cross-examined accused on psychiatric history and then commented on the matter in summation even though there was no relevance whatsoever to the defendant's psychiatric history or condition.
49. *People v. Odle*, 187 A.D.2d 536 (2d Dep't 1992): New trial ordered where prosecutor repeatedly elicited evidence of uncharged crimes against accused in order to show his criminal propensity and bad character, attempted to paint him as guilty by association, and committed summation misconduct.
50. *People v. Banch*, 80 N.Y.2d 610 (1992): Reversing manslaughter conviction where the prosecutor "mistakenly" gave the defense the wrong police memo book, withheld prior affidavits of a People's witness, and falsely represented that a report by another People's witness contained no information required to be disclosed.



51. *People v. Robinson*, 191 A.D.2d 595 (2d Dep’t 1993): Ordering new trial where prosecutor “engaged in a series of improper remarks and tactics,” including eliciting testimony about defendant’s postarrest silence and stressing the point in both his opening and summation; eliciting improper expert testimony and mischaracterizing the issue in summation; and, also in summation, referring to defense counsel’s summation as a “con job,” vouching for the complainant’s truthfulness, and “derisive[ly]” commenting on the presumption of innocence and defendant’s right to remain silence.
52. *People v. Hill*, 193 A.D.2d 619 (2d Dep’t 1993): Ordering new trial where prosecutor cross-examined defendant in a manner intended to improperly to show defendant’s criminal propensity and then focused on this line of argument in summation.
53. *People v. Davis*, 196 A.D.2d 597 (2d Dep’t 1993): Reversing a rape and robbery conviction where the prosecutor had refused to disclose the basis for the People’s expert’s conclusion that defendant’s DNA matched that found on the victim.
54. *People v. Gaines*, 199 A.D.2d 335 (2d Dep’t 1993): Reversing manslaughter conviction where the District Attorney’s Office employed the same scheme condemned in *Steadman*, i.e., withholding a cooperation agreement made between the trial assistants’ superior and the principal prosecution witness’s attorney.
55. *People v. Torres*, 199 A.D.2d 442 (2d Dep’t 1993): Ordering new trial based in part on prosecutor’s persisting in lines of cross-examination over sustained objections, including questioning a defense witness excessively about his drug use, questioning defendant about irrelevant matter of whether he thought drugs were a problem in schools, and accusing defendant of tailoring his testimony after hearing other witnesses testify.
56. *People v. Steadman/Blair*, 82 N.Y.2d 1 (1993): Reversing a defendant’s manslaughter conviction where the District Attorney’s Office made a “determined effort” to avoid its obligations to disclose exculpatory evidence and to correct false testimony, by employing a “scheme” under which a supervisor in the Office would make a cooperation agreement with a witness’s attorney, but not reveal the agreement to the prosecutors handling the defendant’s case at trial, and not correct the witness’s false testimony denying such an agreement. *See also People v. Blair*, 186 A.D.2d 665 (2d Dep’t 1992) (noting that the scheme operated at “the executive level of the District Attorney’s Office”).
57. *People v. Fearnot*, 200 A.D.2d 583 (2d Dep’t 1994): Reversing robbery conviction where the prosecutor withheld prior statements of the complainant describing the robbery, suggested, without evidentiary support, that the defendant was a prostitute, and tried to inflame the jury by citing the AIDS epidemic.



58. *People v. Kirchner*, 200 A.D.2d 766 (2d Dep’t 1994): Reversing assault conviction where the prosecution failed to disclose witness statements.
59. *People v. Baxley*, 84 N.Y.2d 208 (1994): Remitting a CPL 440 motion challenging a murder conviction for a hearing to determine the truth and materiality of a witness’s affidavit, which stated that before trial he had informed the prosecutor that he and a People’s witness had been induced by police to fabricate a jail-house confession, evidence the Court of Appeals deemed “crucial” to the People’s case. (Mr. Baxley was killed in prison before the hearing could be held, according to his counsel, Harold Ferguson.)
60. *People v. Elder*, 207 A.D.2d 498 (2d Dep’t 1994): Reversing conviction in part based on prosecutor’s unspecified improper comments in summation regarding two defense witnesses and a prosecution witness.
61. *People v. Giersz*, 212 A.D.2d 805 (2d Dep’t 1995): Reversing conviction where prosecutor’s summation “exceeded the broad bounds of rhetorical comment permissible in closing arguments.”
62. *People v. Spinelli*, 214 A.D.2d 135 (2d Dep’t 1995): Reversing conviction where prosecutor failed to cross-examine defendant on his postarrest silence then attacked the defendant’s credibility on that ground during summation, thus unfairly depriving defendant of chance to explain the silence.
63. *People v. Moss*, 215 A.D.2d 594 (2d Dep’t 1995): Reversing conviction in part based on prosecutor’s disregard of court’s *Sandoval* ruling when cross-examining defendant, repeated references to defendant as a violent person, cross-examination questions calculated to compare defendant to Hannibal Lecter in *Silence of the Lambs*, remarks inviting jurors to put themselves in the shoes of victims being threatened by defendant, and waiving of a knife in front of the jury during summation.
64. *People v. Leuthner*, 216 A.D.2d 327 (2d Dep’t 1995): Reversing conviction where prosecutor asked defendant whether the complainant was lying, asked defendant’s character witness about her personal knowledge of the facts underlying defendant’s past conviction, failed to establish a good-faith basis for questioning about a threat made by the defendant’s father, and failed to stay within the four corners of the evidence during summation.
65. *People v. Scott*, 217 A.D.2d 564 (2d Dep’t 1995): Ordering new trial based on “flagrant” and “pervasive” summation misconduct, where prosecutor (1) repeatedly referred to defendant as convicted felon, in an attempt to get the jury to convict defendant based on criminal propensity, (2) denigrated defendant,

including by suggesting that defendant thought jurors just “fell off the stupid truck,” and (3) attempted to shift the burden of proof.

66. *People v. James*, 218 A.D.2d 709 (2d Dep’t 1995): Ordering new trial on other grounds but noting “some unacceptable practices engaged in by the prosecutor” — namely, the “repeatedly condemned tactic” of suggesting during cross-examination and summation that the complainant, in identifying the defendant, was either correct or lying, and excessive references to the defendant’s criminal record.
67. *People v. Shim*, 218 A.D.2d 757 (2d Dep’t 1995): New trial ordered where prosecutor failed to disclose police officer’s notes.
68. *People v. Ferrara*, 220 A.D.2d 612 (2d Dep’t 1995): Affirming conviction but noting that prosecutor “committed several instances of misconduct during the course of his summation” by commenting, without proper foundation, on a defense witness’s failure to provide the police with information; suggesting that defense counsel’s objections had deprived jury of hearing certain testimony; and telling the jury that it should take only 10 to 15 minutes to decide the case.
69. *People v. Torres*, 223 A.D.2d 741 (2d Dep’t 1996): Reversing conviction where prosecutor made personal attacks on defense counsel and argued that there was no evidence that defendant was somewhere other than the scene of the robbery, which improperly shifted the burden of proof to the accused.
70. *People v. Brown*, 224 A.D.2d 539 (2d Dep’t 1996): New trial ordered where prosecutor failed to disclose firearms report that contained substantially different information than that given by People’s witness at trial.
71. *People v. Moustakis*, 226 A.D.2d 401 (2d Dep’t 1996): Reversing conviction where the prosecutor presented a cooperating witness who “forgot” the details of his past crimes, but withheld 16 pages of interview notes detailing these crimes for the District Attorney’s Office.
72. *People v. May*, 228 A.D.2d 523 (2d Dep’t 1996): Reversing a murder conviction where the prosecutor failed to disclose a cooperation agreement with its star witness, and failed to correct his false testimony that no such agreement existed.
73. *People v. Croons*, 231 A.D.2d 585 (2d Dep’t 1996): Reversing robbery conviction where the prosecution wrongfully withheld prior statements of a key witness, the complainant.
74. *People v. Bonnen*, 236 A.D.2d 479 (2d Dep’t 1997): Reversing conviction based in part on prosecutor’s failure to present evidence he had promised in opening that

defendant had shot an additional victim, and then admitting at end of trial that he had “no information” as to that victim’s whereabouts, prompting court to call prosecutor’s representation in his opening statement “disingenuous.”

75. *People v. Ying*, 236 A.D.2d 630 (2d Dep’t 1997): Reversing robbery conviction on other grounds, while condemning the prosecutor’s withholding of the terms of a cooperation agreement with a People’s witness.
76. *People v. Brown*, 241 A.D.2d 460 (2d Dep’t 1997): People agree to reversal of sexual abuse conviction based on prosecution’s failure to disclose prior statements of arresting officer.
77. *People v. Lippolis*, 246 A.D.2d 557 (2d Dep’t 1998): Ordering new trial where prosecutor in his opening statement, among other things, improperly called the defendant a “parasite” and told the jury that “citizens like [them]selves indicted this defendant”; during direct examination of the arresting officer, elicited that defendant had remained silent after his arrest; and during summation, again referred to defendant’s postarrest silence.
78. *People v. Mackey*, 249 A.D.2d 329 (2d Dep’t 1998): Reversing robbery conviction where the prosecutor “deliberately” set a trap for the defense at trial by withholding critical information required to be disclosed earlier.
79. *People v. Walters*, 251 A.D.2d 433 (2d Dep’t 1998): Ordering new trial where prosecutor repeatedly made inflammatory remarks designed to appeal to the jury’s sympathy, such as commenting that the victim “was probably going to be a brilliant artist”; shifted the burden of proof by noting that the defendant did not call additional witnesses; stated that “the only real evidence is the People’s evidence”; accused the defendant of tailoring his testimony after hearing the prosecution witnesses; described the defendant’s testimony as “continued lies on top of lies, on top of lies,” and “tales and lies, back and forth, back and forth”; gave his personal opinion on the truth and falsity of witnesses’ testimony; vouched for the victim’s credibility; and, “most egregious[ly],” insinuated that a gun recovered from defendant two weeks after the crime may have been used in the charged shooting, even though the prosecutor knew that a ballistics test had conclusively established otherwise.
80. *People v. Anderson*, 256 A.D.2d 413 (2d Dep’t 1998): Ordering new trial where prosecutor (1) brought out only inculpatory portion of statement at trial and, thanks to trial court error, succeeding in blocking defendant’s attempt to bring out exculpatory portion, and (2) compounded misconduct by telling jury in summation that accused had not made any exculpatory statement.
81. *People v. Brown*, 256 A.D.2d 414 (2d Dep’t 1998): Reversing conviction on

evidentiary grounds but noting as independent ground for reversal the prosecutor's improper comment on defendant's declining to testify, his misstatements of the evidence, and his references to matters not in evidence.

82. *People v. Rivera*, 259 A.D.2d 570 (2d Dep't 1999): Affirming conviction but "deplor[ing] the continuous failure of the Assistant District Attorney to follow the admonitions of the trial court regarding his improper summation comments."
83. *People v. Alfaro*, 260 A.D.2d 495 (2d Dep't 1999): Reversing conviction on evidentiary grounds and noting "clear impropriety" of prosecutor's remarks in summation that the presumption of innocence was "gone" or "vanquished"; that while the court would instruct the jury that the defendant had "a lot of rights," they should also consider the victim's rights; and that the jury should infer the defendant's guilt based on his having had a lawyer with him when he surrendered to police.
84. *People v. Robinson*, 260 A.D.2d 508 (2d Dep't 1999): Ordering new trial based on prosecutor's summation misconduct where prosecutor improperly vouched for complainant's truthfulness, appealed to the jury's sympathies and fears by describing the elderly complainant as a person who would be a "classic victim anywhere in this city," accused the defense of manufacturing evidence and putting on perjurious witnesses who were "more full of crap than a Christmas turkey," said he was "ticked off" that members of defendant's family were in the courtroom when a defense witness testified, and ended by telling jury that "[t]he only way this defendant walks out of the courtroom is if you let him."
85. *People v. Lewis*, 262 A.D.2d 584 (2d Dep't 1999): Ordering new trial in part based on prosecutor improperly asking a witness whether defense counsel offered him money or drugs in return for his testimony, and admonishing that such misconduct "is not to be repeated at any subsequent trial."
86. *People v. Washington*, 278 A.D.2d 517 (2d Dep't 2000): Reversing conviction on other grounds but noting impropriety of prosecutor's arguments in summation that defendant's testimony was "a lie" and "a pile of crock," and was "fabricate[d]" after having had "the benefit of counsel," and that the defense's version of events was "patently absurd" and that the jury should not be "fooled" by it.
87. *Farakesh v. Artuz*, No 99-CV-3945 (JG), 2000 WL 1480896 (E.D.N.Y. Oct. 3, 2000): Granting habeas petition because prosecutor elicited extensive testimony from detectives about defendant's postarrest silence, and repeatedly used this testimony in summation as evidence of defendant's guilty state of mind, and to impeach defendant.
88. *People v. Smith*, 288 A.D.2d 496 (2d Dep't 2001): Ordering new trial where

prosecutor “repeatedly stated unqualified pronouncements of the defendant’s guilt, often inappropriately injecting her personal views,” such as the remark, “of course he did it. This isn’t an issue of who did it”; vouched for witnesses’ credibility; appealed to the sympathy of the jury by commenting that the victim was “courageous” for going to the police and for “coming before you” and that the victim was “ill” but still came to court; referred to evidence as “uncontroverted,” which was a veiled (and improper) reference to defendant’s declining to testify; and implied that a witness who could not speak and therefore did not testify would have fully corroborated the complaining witness.

89. *People v. Leavy*, 290 A.D.2d 515 (2d Dep’t 2002): Prosecutor withheld promises of leniency given to cooperating witness, but court upheld conviction because defense otherwise was able to obtain information and cross-examine witness.
90. *People v. Ni*, 293 A.D.2d 552 (2d Dep’t 2002): Reversing assault conviction where the prosecutor’s flagrantly improper comments during opening and closing statements shifted the burden of proof, inflamed the jury, and denigrated the defense.
91. *Jenkins v. Artuz*, 294 F.3d 284 (2d Cir. 2002): Affirming grant of writ of habeas corpus where first prosecutor caused a mistrial by withholding a crucial witness’s cooperation agreement until the day of his testimony, then second prosecutor, on retrial, allowed same witness to falsely deny the existence of the agreement, objected to the defense’s efforts to bring it out, reinforced the witness’s false denial on redirect, and bolstered the false testimony in summation.
92. *People v. Lauderdale*, 295 A.D.2d 539 (2d Dep’t 2002): Ordering new trial based in part on prosecutor’s 31 references to defendant’s highly prejudicial nickname, “Homicide.”
93. *People v. Bhupsingh*, 297 A.D.2d 386 (2d Dep’t 2002): Reversing on other grounds, but noting that prosecutor’s misconduct could have served as additional basis for reversal, where prosecutor persistently questioned defendant about collateral matters in a manner intended to denigrate him, continually asked leading questions of prosecution witnesses, placed inadmissible hearsay before the jury, improperly elicited evidence of prior consistent statements made by the complainant, and made inflammatory comments in summation that denigrated the defense and appealed to the sympathy of the jury.
94. *People v. Ramashwar*, 299 A.D.2d 496 (2d Dep’t 2002): Reversing conviction because prosecutor put her own credibility at issue by seeking to impeach two defense witnesses with their inconsistent prior statements to her, and by commenting upon the inconsistencies in summation.

95. *People v. Jones*, 305 A.D.2d 698 (2d Dep’t 2003): Reversing robbery conviction where the prosecutor deliberately attempted to create the unfair impression that the codefendant had implicated the defendant to police.
96. *People v. Jamal*, 307 A.D.2d 267 (2d Dep’t 2003): Ordering new trial where prosecutor inappropriately told jury in summation that certain evidence was kept from them for “legal reasons”; argued that indictment was evidence of defendant’s guilt; repeatedly gave his personal opinion as to the truth of prosecution witnesses’ testimony and as to defendant’s guilt; and shifted the burden of proof by referring to the People’s evidence as “undisputed” and “[u]ncontroverted,” while stating that defendant had “no explanation” and “no rational defense” and asking rhetorically, “[w]hat is the defense, ladies and gentlemen?”
97. *People v. Milligan*, 309 A.D.2d 950 (2d Dep’t 2003): Ordering new trial in part based on prosecutor’s improper vouching for witnesses’ credibility.
98. *Su v. Fillion*, 335 F.3d 119 (2d Cir. 2003): Granting habeas corpus relief in a murder case where the prosecutor failed to disclose a crucial witness’s cooperation agreement, knowingly presented the witness’s perjured testimony denying the existence of such an agreement and lying about his criminal conduct, and improperly bolstered the witness’s false testimony on summation.
99. *People v. Thomas*, 8 A.D.3d 303 (2d Dep’t 2004): Conviction set aside by trial judge after verdict based on *Brady* violations, but verdict re-instated by Appellate Division for procedural reasons.
100. *Turner v. Schriver*, 327 F.Supp.2d 174 (E.D.N.Y. 2004): Granting federal habeas corpus relief in a robbery case where the prosecutor failed to disclose the criminal record of the People’s only witness to the crime and falsely represented to the jury that the witness had no record.
101. *People v. Mitchell*, 14 A.D.3d 579 (2d Dep’t 2005): Reversing conviction where prosecution withheld police reports, causing substantial prejudice to the defendant.
102. *People v. Brown*, 30 A.D.3d 609 (2d Dep’t 2006): Reversing conviction based on jury-instruction error, but citing as independent ground for reversal misconduct by the prosecutor, including “presenting himself as an unsworn witness at trial, suggesting that the defense counsel did not believe his own client, making public safety arguments, and implying that certain key evidence had been kept from the jury due to legal technicalities.”
103. *People v. Knight*, 18 Misc.3d 1129(A) (Sup. Ct. Queens Cty. 2007): Setting aside verdict after defense discovered that prosecutor failed to disclose significant *Brady* material related to defendant’s legitimate self-defense claim.



104. *People v. Bennett*, 40 A.D.3d 653 (2d Dep’t 2007): Ordering new trial where prosecutor ambushed defense by representing that he would not call witness and that no *Rosario* existed, but then turning over *Rosario* material and calling witness, and capitalizing on these unfair tactics in summation.
105. *People v. Frantz*, 57 A.D.3d 692 (2d Dep’t 2008): Ordering 440 hearing in murder conviction where prosecutor failed to disclose inconsistent statements of cooperating witness concerning such witness’s account of the crime.
106. *People v. Sayers*, 64 A.D.3d 728 (2d Dep’t 2009): Ordering new trial in part based on prosecutor’s improper comments in opening and summation regarding evidence of defendant’s uncharged crimes.
107. *People v. Bellamy*, 26 Misc. 3d 1210(A) (Sup. Ct. Queens Cty. 2010): Setting aside murder conviction based on prosecution’s failure to disclose, among other things, benefits given to a key prosecution witness. The prosecutor also gave a misleading and prejudicial summation. Subsequent civil rights litigation revealed that the prosecution participated in manufacturing false identification testimony.
108. *People v. Spann*, 82 A.D.3d 1013 (2d Dep’t 2011): Reversing conviction where prosecutor improperly commented on the defendant’s medical evidence, presented to explain his perspiration and rapid heartbeat during traffic stop, by referring to it as a “distraction,” a “smokescreen,” and “smoke and mirrors”; impermissibly shifted the burden of proof by telling jurors that if they did not find the defendant’s testimony “reasonable,” they could not “form the basis of reasonable doubt”; and stated 14 times that police had recovered a handgun from under the passenger seat of the car, where defendant was sitting, although no evidence was presented at trial to support that claim.
109. *People v. Anderson*, 83 A.D.3d 854 (2d Dep’t 2011): Ordering new trial where prosecutor defied court’s *Sandoval* ruling to ask “a series of irrelevant and prejudicial questions” concerning defendant’s prior narcotics conviction, and in summation vouched for witnesses’ credibility, denigrated the defense, and mischaracterized defendant’s testimony.
110. *People v. Robinson*, 34 Misc.3d 1217(A) (Crim. Ct. Queens Cty. 2011): Ordering a hearing where prosecutor’s delay in *Brady* disclosure was a “clear and unequivocal breach” of that prosecutor’s responsibility.
111. *People v. Bedi*, Ind. No. 4107/96 (Sup. Ct. Queens Cty. March 13, 2013) (Griffin, A.J.S.C.): Setting aside murder conviction where prosecutor violated *Brady* by failing to disclose payments made to a key witness, and by witness’s false testimony that he did not receive such benefits.



112. *People v. Joyner*, 126 A.D.3d 1002 (2d Dep’t 2015): Reversing weapon possession conviction where prosecutor’s summation deprived defendant of a fair trial by accusing him, without evidence, of uncharged crimes, and making statements implying guilt by association.
113. *People v. Singh*, 128 A.D.3d 860 (2d Dep’t 2015): Reversing rape conviction where prosecutor, during summation, acted as an unsworn witness, improperly invited the jury to speculate as to certain matters, denigrated the defense while vouching for the complainant’s credibility, and shifted the burden of proof.
114. *People v. Negron*, 26 N.Y.3d 262 (2015): Setting aside attempted murder conviction where prosecutor failed to disclose evidence that was “plainly favorable” to the defense. Prior litigation in the case revealed that after the complainant failed to identify Negron in a lineup, the prosecutor took the complainant into a private room with members of the NYPD, which led the complainant to view the lineup again and falsely identify Negron as the perpetrator.
115. *People v. Cantoni*, 140 A.D.3d 782 (2d Dep’t 2016): Reversing conviction where prosecutor repeatedly shifted the burden of proof to the defendant, told the jurors that they would have to find the People’s witnesses had lied in order to believe the defense, vouched for the credibility of police witnesses, and denigrated the defense.
116. *People v. Redd*, 141 A.D.3d 546 (2d Dep’t 2016): Reversing conviction for “pervasive prosecutorial misconduct” where prosecutor, in opening and summation, misstated the evidence, vouched for the credibility of witnesses, called for speculation by the jury, made inflammatory statements, and improperly denigrated the defense.
117. *People v. Brisco*, 145 A.D.3d 1028 (2d Dep’t 2016): Reversing conviction because prosecutor, in summation, attacked defense counsel’s integrity, improperly referenced facts not in evidence, misstated critical witness testimony, and made inflammatory “safe streets” arguments.
118. *People v. Davis*, 147 A.D.3d 1077 (2d Dep’t 2017): Reversing conviction on other grounds but noting that prosecutor “made improper summation comments regarding the failure of the defendant to communicate certain information to the police at the time of his apprehension.”